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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/725,177

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Robert A. Ellis

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2054

7590  
William J. Kolegraff  
3119 Turnberry Way  
Jamul, CA 91935

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EXAMINER

MERCHANT, SHAHID R

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/725,177	<b>Applicant(s)</b> ELLIS ET AL.	
	<b>Examiner</b> SHAHID R. MERCHANT	<b>Art Unit</b> 3692	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 February 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Status of the Claims***

1. This action is in response to the amendment filed on February 25, 2008.
  - Claims 1-19 are pending.
  - Claims 1-4, 6, 7, 13 and 19 have been amended.

### ***Response to Arguments***

2. Applicant's arguments, regarding 35 U.S.C. § 101 have been fully considered and are persuasive. The rejection has been withdrawn.
3. Applicant's arguments with respect to claims 1-19 have been considered but are moot in view of the new ground(s) of rejection.
4. Regarding the use of ranking in view of rating, Jennings takes into account the rating or relative accuracy of the participant when assigning a ranking to a participant (see column 22, lines 39-56).
5. Regarding claim 5, Applicant has failed to adequately rebut Examiner's Official Notice that Optical Character Recognition (OCR) is old and well known in the arts.

Examiner notes the following discussion of Official Notice taken from the MPEP:

To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b). See also *Chevenard*, 139 F.2d at 713, 60 USPQ at 241 ("[I]n the absence of any demand by appellant for the examiner to produce authority for his statement, we will not consider this contention."). A general allegation that the claims define a patentable invention without any reference to the examiner's assertion of official notice would be inadequate. If applicant adequately traverses the examiner's assertion of official notice, the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained. See 37 CFR 1.104(c)(2). See also

Art Unit: 3692

*Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697 (“[T]he Board [or examiner] must point to some concrete evidence in the record in support of these findings” to satisfy the substantial evidence test). If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. See 37 CFR 1.104(d)(2). If applicant does not traverse the examiner's assertion of official notice or applicant's traverse is not adequate, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate. If the traverse was inadequate, the examiner should include an explanation as to why it was inadequate. (MPEP § 2144.03(C))

Applicant has not “specifically pointed out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art.” For this reason, the aforementioned limitations are taken to be admitted prior art.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-19 rejected under 35 U.S.C. 103(a) as being unpatentable over Jennings et al., U.S. Patent No. 6,606,615 (see PTO-892, Ref. A) in view of Peterson et al., U.S. Patent No. 7,016,873 (see PTO-892, Ref. B) in view of Gatto, U.S. Patent Application Publication 2002/0052820 (see PTO-892, Ref. C) and further in view of Sloan et al., U.S. Patent Application Publication 2002/0147671 (see PTO-892, Ref. K).

8. As per claim 1, Jennings teaches a method operating on a general purpose computer for managing investment information, comprising: registering a member (see column 17, lines 18-39 and abstract); soliciting investment experience data from the member (see column 17, lines 18-39); receiving at least one required target projection from the member, the target projection being a speculation of a value of the investment in the future (see column 19, lines 19-28 and abstract) and adjusting the initial skill-level rating of the member to an adjusted skill-level rating responsive to the accuracy of the target projection as compared to actual performance of the investment (see column 24, lines 36-67 and column 25, lines 1-36).

Jennings does not explicitly teach generating an initial skill-level rating for the member responsive to the investment experience data, presenting to the member investment information collected from other members regarding an investment, filtering the investment information according to members current skill level rating and displaying to the member target projections indicative of target projections received from other members, target projections being a speculation of a value of an investment in the future.

Peterson teaches generating an initial skill-level rating for the member responsive to the investment experience data (see Figures 1A, 1B, 1C and column 4, lines 19-29).

Therefore, it would be prima facie obvious to a person of ordinary skill in the art at the time of the invention to combine the teachings of Jennings, Peterson, Gatto and Sloan to generate an initial skill-level rating responsive to investment experience

because it allows one to measure a members risk tolerance as taught by Peterson (see column 4, lines 19-29).

Gatto teaches presenting to the member investment information collected from other members regarding an investment and displaying to the member target projections indicative of target projections received from other members, target projections being a speculation of a value of an investment in the future (see Figure 38 and paragraphs 321-324).

Therefore, it would be prima facie obvious to a person of ordinary skill in the art at the time of the invention to combine the teachings of Jennings, Peterson, Gatto and Sloan to share information collected from other members, because it allows one to measure and analyze the past performances of several members as taught by Gatto (see paragraph 17).

Sloan teaches filtering the investment information according to members current skill level rating (see paragraphs 14 and 18).

Therefore, it would be prima facie obvious to a person of ordinary skill in the art at the time of the invention to combine the teachings of Jennings, Peterson, Gatto and Sloan to filter investment information according to members current skill level rating, because it allows one to analyze an review only securities that conform to personal parameters as taught by Sloan (see paragraph 18).

9. As per claim 2, Jennings, Peterson, Gatto and Sloan teach the method of claim 1 as described above. Jennings further teaches wherein the soliciting step further comprises receiving initial projection targets for a test investment; comparing the initial

projection targets to targets derived from the investment information; and using the comparison in determining the initial skill-level rating (see column 22, lines 57-65).

10. As per claim 3, Jennings, Peterson, Gatto and Sloan teach the method of claim 1 as described above. Jennings further teaches wherein the soliciting step further comprises requiring the member to respond to an investment experience question by selecting one or more presented answers (see column 21, lines 8-47).

11. As per claim 4, Jennings, Peterson, Gatto and Sloan teach the method of claim 1 as described above. Jennings further teaches wherein the soliciting step further comprises allowing the member to answer an investment experience question by inputting a free-form response (see column 21, lines 8-47).

12. As per claim 5, Jennings, Peterson, Gatto and Sloan teach the method of claim 4 as described above. Jennings, Peterson and Gatto do not explicitly teach further including processing the free-form response for a word pattern indicative of an investment skill level. Official Notice is taken that Optical Character Recognition (OCR) is old and well known in the arts.

Therefore, it would be prima facie obvious to a person of ordinary skill in the art at the time of the invention to combine the teachings of Jennings, Peterson, Gatto and Official Notice to recognize word patterns indicative of investor skill level because it allows for the rating of the member based on their free-form response.

13. As per claim 6, Jennings, Peterson, Gatto and Sloan teach the method of claim 1 as described above. Jennings further teaches further including filtering the investment

information according to member skill-level rating (see column 21, lines 48-67 and column 22, lines 1-15).

14. As per claim 7, Jennings, Peterson, Gatto and Sloan teach the method of claim 1 as described above. Jennings further teaches further including filtering the investment information by selecting specific members according to those members current skill level rating (see column 21, lines 48-67 and column 22, lines 1-15).

15. As per claim 8, Jennings, Peterson, Gatto and Sloan teach the method of claim 1 as described above. Jennings further teaches wherein presenting the investment information includes presenting other member dialog in the form of posts for a discussion group (see column 36, lines 24-52).

16. As per claim 9, Jennings, Peterson, Gatto and Sloan teach the method of claim 1 as described above. Jennings does not explicitly teach wherein presenting the investment information includes presenting an indicia of member ratings.

Gatto teaches wherein presenting the investment information includes presenting an indicia of member ratings (see Figure 41).

Therefore, it would be prima facie obvious to a person of ordinary skill in the art at the time of the invention to combine the teachings of Jennings, Peterson and Gatto to include an indicia of member rating, because it allows one to measure and analyze the past performances of several members and their accuracies at predicting stock values as taught by Gatto (see Figure 41).

17. As per claim 10, Jennings, Peterson, Gatto and Sloan teach the method of claim 1 as described above. Jennings further teaches further including receiving the target



projection for the investment in a specific time period (see Figure 5A and column 26, lines 6-36).

18. As per claim 11, Jennings teaches the method of claim 10 as described above. Jennings further teaches wherein the time period is N weeks in the future, and the target projection is a speculation of the average value of the investment in the time period (see Figure 5A and column 26, lines 6-36).

19. As per claim 12, Jennings, Peterson, Gatto and Sloan teach the method of claim 1 as described above. Jennings further teaches wherein the time period is one week (see Figure 5A and column 26, lines 6-36).

20. Claim 13 recites similar limitations to claim 1 and thus rejected using the same art and rationale in the rejection of claim 1 as set forth above.

21. Claim 14 recites similar limitations to claim 6 and thus rejected using the same art and rationale in the rejection of claim 6 as set forth above.

22. Claim 15 recites similar limitations to claim 4 and thus rejected using the same art and rationale in the rejection of claim 4 as set forth above.

23. Claim 16 recites similar limitations to claim 5 and thus rejected using the same art and rationale in the rejection of claim 5 as set forth above.

24. Claim 17 recites similar limitations to claim 7 and thus rejected using the same art and rationale in the rejection of claim 7 as set forth above.

25. Claim 18 recites similar limitations to claim 5 and thus rejected using the same art and rationale in the rejection of claim 5 as set forth above.

Art Unit: 3692

26. Claim 19 recites similar limitations to claim 1 and thus rejected using the same art and rationale in the rejection of claim 1 as set forth above.

### ***Conclusion***

27. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHAHID R. MERCHANT whose telephone number is (571)270-1360. The examiner can normally be reached on First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz P. Abdi can be reached on 571-272-6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3692

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SRM

/Kambiz Abdi/  
Supervisory Patent Examiner, Art  
Unit 3692